IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Tikam Singh Vs. State of Rajasthan

S.B.CR.MISC.II BAIL APPL. NO.3064/2006

DATE OF ORDER :: July 21, 2006

PRESENT

HON'BLE MR.H.R.PANWAR,J.

Mr.B.S.Rathore, for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

This is second bail application filed by petitioner Tikam Singh. The first bail application came to be dismissed by this Court vide order dt. 13.9.2005 as it was not pressed by counsel for the petitioner.

Heard learned counsel for the petitioner and the Public Prosecutor for the State.

It is contended by counsel for the petitioner that after rejecting the earlier bail application on 13.9.2005, the trial has

not proceeded. Learned counsel submits that Mr.Mahesh Bora, Advocate, who claimed to be appointed as Special Public Prosecutor before the trial court appeared, which was objected by the petitioner and a writ petition being S.B.Civil Writ Petition No.611/2005 challenging the so called appointment of Mr. Mahesh Bora as a Special Public Prosecutor was filed, which came to be decided by a Co-ordinate Bench of this Court on 8.5.2006. While deciding the writ petition, this Court observed that this Court is clearly of opinion that having regard to the scheme of the Act and Rules, the application as made by the complainants and the consent as stated by Mr.Bora and the order as made by the Collector-cum-District Magistrate, do not stand in conformity with the requirements of law. Engagement of Mr.Bora or any counsel for that matter under Rule 4(5) of the Rules of 1995 could not have been in substitution of the Special Public Prosecutor already appointed in the said Special Court under section 15 of the Act. Rule 4(5) does not envisage such substitution of the Public Prosecutor and the alleged order dt. 16.2.2005 (Annex.4) was quashed. It was further noticed that in the facts and circumstances of the case, it is also required to be noticed that the trial has already got delayed because of the dispute raised about engagement of Mr.Bora as Public Prosecutor and, therefore, it shall be in the fitness of things if the learned Special Judge would consider taking up this trial on priority and

proceed with the same expeditiously.

Learned counsel submits that despite a direction of this Court, the trial has not proceed. The order of this Court dt. 8.5.2006 came to be challenged by Smt. Satki Devi and another before a Division Bench of this Court being D.B.Special Appeal No.285/2006, which came to be admitted on 19.5.2006 and it was ordered that meanwhile, the respondent No.4 (Mr.Mahesh Bora, Advocate, Rajasthan High Court, Jodhpur as evident from the title of D.B.Special Appeal No.285/2006), whose appointment as a counsel for complainant is not in dispute, shall be allowed to act as counsel before the trial court. Thus, the order setting aside the appointment of Mr. Mahesh Bora as a Special Public Prosecutor by Collector, Pali vide Annexure-4 dt. 16.6.2005, which was set aside by this Court vide order dt. 8.5.2006 has not been interfered with. Learned counsel for the petitioner has shown me the order of the trial court dt. 6.6.2006, wherein Shri Chain Raj Jain appeared as Special Public Prosecutor, however, Mr. Mahesh Bora, Advocate also appeared and filed the certified copy of the interim order dt. 19.5.2006 passed by the Division Bench of this Court in D.B.Special Appeal No.285/2006 and stated that still he is entitled to conduct the case as Special Public Prosecutor. For that reason, the matter could not be proceeded and was adjourned to 22.7.2006.

From the order of the Division Bench dt. 19.5.2006, it appears that the matter was directed to be listed in second week of July, 2006. Learned counsel for the petitioner submits that despite there being a direction of Division Bench vide order dt. 19.5.2006, D.B.Special Appeal has not been listed and, therefore, learned counsel for the petitioner submits that the petitioner may be released on bail and in the alternative if not so, then at this stage a direction for speedy trial as envisaged under Article 21 of the Constitution of India be issued to the trial court to proceed with the trial day to day so that trial can be concluded without any further delay. The petitioner has been detained without there being a trial since March, 2005.

Mr.Mahesh Bora has shown me a copy of the order of Division Bench when specifically asked as to whether he appears in the capacity of counsel for the complainant or a Special Public Prosecutor, he submits that neither he appears for the counsel for the complainant nor as a Special Public Prosecutor as he claims to be a Special Public Prosecutor before the trial court.

Keeping in view the facts and circumstances of the case and chequered history of the case and the fact that the trial has not been proceeding as directed by this Court while deciding the writ petition vide order dt. 8.5.2006 and the fact that the

petitioner is in custody for more than a year without his trial is being proceeded, instead of releasing the petitioner on bail, it would be appropriate in the interest of justice to direct the learned Special Court where the trial is pending to expedite the trial of the case by taking up the matter day-to-day as a sessions case, which is otherwise needed to be proceeded day-to-day and decide the matter utmost expeditiously as directed by the Co-ordinate Bench of this Court.

With these observations, the second bail application filed by petitioner under section 439 Cr.P.C. is dismissed. However, it is made clear that despite the repeated directions of this Court if the trial is not proceeded expeditiously, it will be open for the petitioner to file a fresh bail application.

[H.R.PANWAR],J.

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